

**ANALYSIS OF ORIGINAL BILL**

Author: Arambula Analyst: Nicole Kwon Bill Number: AB 2530  
 Related Bills: See Legislative History Telephone: 845-7800 Amended Date: February 23, 2006  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:**

Qualified Development Corporation Contributions Credit/FTB Provide Annually To Legislature List Of Names Of Qualified Economic Development Corporations That Received Contributions And Total Dollar Amount Of Credits Claimed

**SUMMARY**

This bill would allow taxpayers a credit for contributions made to qualified development corporations.

**PURPOSE OF THE BILL**

According to the author's office, the purpose of the bill is to promote economic development, create wealth, and create job opportunities in low- or moderate-income geographic areas.

**EFFECTIVE/OPERATIVE DATE**

As a tax levy, this bill would be effective immediately and would be specifically operative for taxable years beginning on or after January 1, 2007.

**POSITION**

Pending.

**ANALYSIS****FEDERAL/STATE LAW**

Under current federal law, corporations and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition is exempt from federal income taxes

Under current federal law, a taxpayer is allowed a credit totaling 50% of the qualified contributions made before July 1999 to certain community development corporations (CDCs). After 1999, no new credits are allowed under federal law. However, this credit is required to be spread evenly over a 10-year period beginning with the taxable year that the contribution is made (i.e., 5% each taxable year). Thus, the last taxable year in the required 10-year period for the last qualified contribution made during the first half of 1999 is taxable year 2008.

**Board Position:**

\_\_\_\_\_ S                      \_\_\_\_\_ NA                      \_\_\_\_\_ NP  
 \_\_\_\_\_ SA                      \_\_\_\_\_ O                      \_\_\_\_\_ NAR  
 \_\_\_\_\_ N                      \_\_\_\_\_ OUA                        X   PENDING

Department Director

Date

John W. Davies

03/30/06

for Selvi Stanislaus

Although California does not conform to the federal credit for contributions to CDCs, a 20% state credit is allowed for each “qualified investment” in a California “community development financial institution” (CDFI). The “qualified investment” in the California CDFI must be at least \$50,000, must be for a minimum duration of 60 months, and may consist of either of the following:

- A deposit or loan that does not earn interest.
- An equity investment.

A California CDFI is defined as a private financial institution located in California and certified by the California Organized Investment Network (COIN) that has community development as its primary mission and lends in urban, rural, or reservation-based communities in California. A CDFI includes a community development bank, a community development loan fund, a community development credit union, a micro-enterprise fund, a community development corporation-based lender, or a community development venture fund.

California law provides for a recapture of the credit if the “qualified investment” is reduced or withdrawn before the end of the 60-month period. This credit will sunset for taxable years beginning on or after January 1, 2007.

State law requires COIN, or its successor, to certify and issue certificates regarding each CDFI, each qualified deposit, and the total amount of credit allocated. COIN also is required to provide the Franchise Tax Board (FTB) with an annual list of taxpayers, their identification numbers, the amount of their deposits, and the total amount of all qualified deposits.

In addition, state law requires a CDFI to apply to COIN for certification of its status and, on behalf of the taxpayer, for certification of the credit amount allocated to the taxpayer. The CDFI is also required to:

- transmit to the taxpayer and COIN certification that a qualified deposit was accepted, the amount of the deposit, and the amount of the entitled credit;
- obtain taxpayer information and provide it to COIN; and
- provide annually to the FTB and COIN a list of those taxpayers who make any early withdrawals or reductions of the qualified deposits.

### THIS BILL

This bill would allow a credit equal to 10% of the amount the taxpayer contributed to a qualified development corporation, limited to a maximum credit of \$1,000 for any taxable year.

This bill defines the term “qualified development corporation” to mean a private, nonprofit organization that meets the requirements of Internal Revenue Code (IRC) Section 501 (c) (3) and operates to attract, expand, and retain jobs within this state.

This bill requires each qualified development corporation to certify and provide the certification documentation to any taxpayer who is claiming a credit.

This bill requires the taxpayer to apply for the credit in the form and manner specified by FTB.

This bill requires FTB annually to provide a list of names to the Legislature of qualified development corporations that received contributions and the total dollar amount of credits claimed.

The credit will be in effect until January 1, 2012, and will be repealed on that date.

### **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill is silent on whether a taxpayer can carry over to future years any credits in excess of tax liability.

The author's office might want to add a detailed definition of "qualified development corporation" and what is meant by "attract, expand, and retain."

### **LEGISLATIVE HISTORY**

AB 957 (Haynes, 2005/06) and AB 251 (Haynes, 2005/06) would have allowed a credit equal to 20% of the cash or 20% of the fair market value of California real property (including a perpetual interest) contributed to a qualified donee. AB 957 failed passage out of the Assembly Jobs, Economic Development and the Economy Committee; AB 251 was held at the Assembly desk.

### **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. Those states do not allow a credit comparable to the credit proposed by this bill. However, those states do provide either enterprise zone tax incentives in economically depressed areas or financial incentives (i.e., industrial development bonds, infrastructure loans and grants, venture capital funds, and other community development assistance programs) to promote community development.

### **FISCAL IMPACT**

This bill would not significantly impact the department's costs.

## ECONOMIC IMPACT

### Revenue Estimate

Based on data and assumptions discussed below, the Personal Income Tax and Corporation Tax revenue loss from this bill would be as follows:

Estimated Revenue Impact of AB 2530 Operative for Taxable Years Beginning On Or After January 1, 2007 Enactment Assumed After June 30, 2006 (\$ Millions)			
	2007-2008	2008-2009	2009-2010
Qualified Dev. Corp. Credit	-\$1.1	-\$1.2	-\$1.2

This bill does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

### Tax Revenue Discussion

The revenue impact of this bill would be determined by the amount of tax credits, based on amounts contributed to qualified development corporations that can be applied to reduce tax liabilities.

Departmental data shows that, in fiscal year 2005-2006, there were 98,900 entities that met the exempt organization qualification of IRC Section 501 (c) (3) in California. An average annual growth rate of 1.9% was added to the number of exempt entities for a total of 102,700 (2005-2006:  $98,900 \times 1.9\% = 100,780$ ; 2006-2007:  $100,780 \times 1.9\% = 102,700$ ) in fiscal year 2007-2008. It was assumed that 5,135 ( $102,700 \times 5\%$ ) of these exempt entities have as their goal to "attract, expand and retain jobs" in California. It was further assumed that the average contribution made to these entities created under this bill would be \$200 annually, totaling \$1,027,000 ( $5,135 \times \$200$ ) in fiscal year 2007-2008. A growth factor of 10% was added to the estimate to account for the behavioral response to this incentive, giving a final impact of \$1.1 million for fiscal year 2007-2008.

## LEGAL IMPACT

The U.S. Court of Appeals for the 6<sup>th</sup> Circuit ruled in *Cuno v. DaimlerChrysler, Inc.* (2004) 386 F. 3d 738 that Ohio's Investment Tax Credit is unconstitutional because it gives improper preferential treatment to companies to locate or expand in Ohio rather than in other states and, therefore, violates the Commerce Clause of the U.S. Constitution. This case is now pending with the U.S. Supreme Court. The Court will issue its decision on this case by the end of June, 2006. Although the outcome of this decision and its affects on the income tax credits of other states, including California, is unknown, targeted tax incentives that are conditioned on activities in California may be subject to constitutional challenge.

Recently introduced federal legislation titled the "Economic Development Act of 2005," S. 1066 and H. R. 2471 would authorize state tax incentives for economic development purposes that may otherwise be subject to constitutional challenge as discriminatory.

#### **LEGISLATIVE STAFF CONTACT**

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